

STATE CORPORATION COMMISSION

DOCUMENT CONTROL

AT RICHMOND, OCTOBER 5, 2007

COMMONWEALTH OF VIRGINIA, ex rel.

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STATE CORPORATION COMMISSION

CASE NO. BFI-2007-00161

Ex Parte: In re: credit union
service organizations

ORDER TO TAKE NOTICE

WHEREAS, §§ 6.1-225.3, 6.1-225.3:1, and 6.1-225.22 of the Code of Virginia authorize the State Corporation Commission ("Commission") to promulgate regulations to implement the provisions of the Virginia Credit Union Act and permit state-chartered credit unions to exercise powers comparable to federal credit unions;

WHEREAS, subsection 10 of § 6.1-225.57 of the Code of Virginia authorizes state-chartered credit unions to invest their funds in or make loans to entities known as credit union service organizations ("CUSOs");

WHEREAS, 12 U.S.C. § 1757(7)(I) and 12 C.F.R. § 712.1 et seq. prescribe the terms and conditions under which federal credit unions may invest in or make loans to CUSOs; and

WHEREAS, based on the terms and conditions under which federal credit unions are authorized to invest in or make loans to CUSOs, the Bureau of Financial Institutions has proposed regulations that would impose similar terms and conditions on state-chartered credit unions that wish to invest their funds in or make loans to CUSOs;

IT IS THEREFORE ORDERED THAT:

- (1) The proposed regulations are appended hereto and made a part of the record herein.
- (2) Comments or requests for hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center,

P.O. Box 2118, Richmond, Virginia 23218, on or before December 14, 2007. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2007-00161. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

(3) The proposed regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/caseinfo.htm>.

AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order, together with a copy of the proposed regulations, to all state-chartered credit unions and such other interested parties as he may designate.

10 VAC 5-40-5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Credit union service organization” or “CUSO” means a corporation, limited liability company, or limited partnership of which more than 50% of the voting shares or ownership interest is held, directly or indirectly, by one or more credit unions or organizations of credit unions.

“GAAP” means generally accepted accounting principles.

“Immediate family member” means a spouse or other family member living in the same household.

“Officials” means a credit union’s directors or committee members.

“Reserves” means the total of undivided earnings, regular reserves, and any other type of funds held in reserve except allowances for loan losses.

“Senior management employee” means a credit union’s chief executive officer (typically the president or treasurer/manager), any assistant chief executive officers (e.g., assistant president, vice president, or assistant treasurer/manager), and the chief financial officer (comptroller).

10 VAC 5-40-60. Credit union service organizations (CUSOs).

A. 1. Except as otherwise provided in this section, a state-chartered credit union shall not, directly or indirectly, invest its funds or make loans pursuant to subsection 10 of § 6.1-225.57 of the Code of Virginia.

2. A CUSO shall not, directly or indirectly, invest any of its funds in a corporation, limited liability company, partnership, association, trust, or other legal or commercial entity unless the state-chartered credit union or credit unions having an interest in the CUSO would be permitted to directly invest its funds in such entity and the state-chartered credit union or credit unions comply with the notice requirements in subsection B and the other provisions of this section.

3. CUSOs shall not, directly or indirectly, acquire control of another depository institution, nor invest in shares, stocks, or obligations of an insurance company, trade association, liquidity facility, or similar organization, corporation, or association.

B. 1. At least 60 days prior to investing in or making loans to a CUSO, either directly or indirectly, a state-chartered credit union shall give written notice of its proposed investment or loans to the Commissioner of Financial Institutions ("Commissioner") along with a business plan, marketing plan, financial analyses, and any other information the Commissioner may require concerning the proposed investment or loans.

2. If a state-chartered credit union wishes to subsequently increase the amount of its investment in or loans to a CUSO, it shall give written notice to the Commissioner at least 30 days prior to such additional investment or loans along with any additional information the Commissioner may require.

3. A state-chartered credit union may invest up to 5.0% of its outstanding shares and reserves in a CUSO. However, a state-chartered credit union's total investments in all CUSOs shall not exceed, in the aggregate, 5.0% of its outstanding shares and reserves.

4. A state-chartered credit union may make loans to a CUSO provided that the amount of the loans, when combined with the credit union's total investments in and loans to all CUSOs, does not exceed, in the aggregate, 5.0% of its outstanding shares and reserves.

5. If the limits specified above are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, without an additional cash outlay by the state-chartered credit union, divestiture is not required. A state-chartered credit union may continue to invest up to these limits without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

6. The 5.0% limits specified in this subsection may be exceeded with prior written approval from the Commissioner.

C. 1. A state-chartered credit union may invest in or make loans to a CUSO only if the CUSO is or will be structured as a corporation, limited liability company, or limited partnership. A state-chartered credit union may only participate in a limited partnership as a limited partner.

2. A state-chartered credit union may invest in or make loans to a CUSO only if the CUSO is or will be providing its products and services exclusively to (i) the credit union or credit unions that have invested in the CUSO; (ii) the members of the credit union or credit unions that have invested in the CUSO; (iii) other credit unions; and (iv) organizations of credit unions.

3. A state-chartered credit union shall account for its investments in or loans to a CUSO in conformity with GAAP.

4. A state-chartered credit union shall obtain written agreements from a CUSO, prior to investing in or making loans to the CUSO, that the CUSO shall:

a. Account for all of its transactions in accordance with GAAP;

b. Prepare quarterly financial statements and obtain an annual financial statement audit of its financial statements by a licensed certified public accountant in accordance with generally accepted auditing

standards. A wholly owned CUSO is not required to obtain a separate annual financial statement audit if it is included in the annual consolidated financial statement audit of the credit union that is its parent; and

c. Provide the Bureau of Financial Institutions ("Bureau") and its staff with complete access to any books and records of the CUSO and the ability to review CUSO internal controls, as deemed necessary by the Bureau in carrying out its responsibilities under the Virginia Credit Union Act (§ 6.1-225.1 et seq. of the Code of Virginia).

5. A CUSO shall comply with all applicable federal, state, and local laws and regulations.

D. 1. A state-chartered credit union and a CUSO shall be operated in a manner that demonstrates to the public the separate existence of the state-chartered credit union and the CUSO. Good business practices dictate that each shall operate so that:

a. Its respective business transactions, accounts, and records are not intermingled;

b. Each observes the formalities of its separate company procedures;

c. Each is adequately financed as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

d. Each is held out to the public as a separate enterprise;

e. The state-chartered credit union does not dominate the CUSO to the extent that the CUSO is treated as a department of the credit union; and

f. Unless the state-chartered credit union has guaranteed a loan obtained by the CUSO, all borrowings by the CUSO shall indicate that the state-chartered credit union is not liable.

2. If a CUSO in which a state-chartered credit union has an investment plans to change its structure, the credit union shall obtain prior, written legal advice that the CUSO shall remain established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in or

loaned to the CUSO. The legal advice shall address factors that have led courts to “pierce the corporate veil” such as inadequate capitalization, lack of separate corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records. The legal advice may be provided by independent legal counsel of either the investing state-chartered credit union or the CUSO.

E. The Commissioner may at any time, based upon supervisory, legal, or safety and soundness considerations, prohibit or otherwise limit any CUSO activities or services.

F. A state-chartered credit union may only invest in or make loans to CUSOs that are or will be sufficiently bonded or insured for their specific operations.

G. A state-chartered credit union may only invest in or make loans to CUSOs that are or will be engaged in activities and services that are reasonably related to the operations of credit unions, including but not limited to the following:

1. Checking and currency services (i.e., check cashing, coin and currency services, money orders, savings bonds, travelers checks, and purchase and sale of U.S. Mint commemorative coin services);
2. Clerical, professional and management services (i.e., accounting services, courier services, credit analyses, facsimile transmissions, copying services, internal audits for credit unions, locator services, management and personnel training and support, marketing services, research services, and supervisory committee audits);
3. Business loan origination;
4. Consumer mortgage loan origination and processing;

5. Electronic transaction services (i.e., automated teller machine (ATM) services, credit card and debit card services, data processing, electronic fund transfer (EFT) services, electronic income tax filing, payment item processing, wire transfer services, and cyber financial services);
6. Financial counseling services (i.e., developing and administering Individual Retirement Accounts (IRAs), Keogh, deferred compensation, and other personnel benefit plans, estate planning, financial planning and counseling, income tax preparation, investment counseling, and retirement counseling);
7. Fixed asset services (i.e., management, development, sale, or lease of fixed assets, and sale, lease, or servicing of computer hardware or software);
8. Insurance brokerage or agency (i.e., agency for sale of insurance, provision of vehicle warranty programs, and provision of group purchasing programs);
9. Leasing personal property and real estate leasing of excess CUSO property;
10. Loan support services (i.e., debt collection services, loan processing, loan servicing, loan sales, and selling repossessed collateral);
11. Record retention, security and disaster recovery services (i.e., alarm-monitoring and other security services, disaster recovery services, microfilm, microfiche, optical and electronic imaging, CD-ROM data storage and retrieval services, provision of forms and supplies, and record retention and storage);
12. Securities brokerage services;
13. Shared credit union branch (service center) operations;
14. Student loan origination;
15. Trust and trust-related services (i.e., acting as administrator for prepaid legal service plans, acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity, and other trust services); and

16. Real estate brokerage services and real estate listing services.

H. In order for a state-chartered credit union to invest in or make loans to a CUSO that is or will be engaged in activities or services that are not enumerated in subsection G of this section, the state-chartered credit union shall obtain prior approval from the State Corporation Commission ("Commission"). A request for Commission approval of an activity or service that is not enumerated in subsection G of this section shall be submitted with the written notice required by subsection B of this section and include a full explanation and complete documentation of the activity or service and how that activity or service is reasonably related to the operations of credit unions.

I. 1. If a state-chartered credit union has outstanding loans or investments in a CUSO, then the credit union's officials, senior management employees, and their immediate family members shall not receive, either directly or indirectly, any salary, commission, investment income, or other income or compensation from the CUSO or from any person being served through the CUSO. This provision does not prohibit the credit union's officials or senior management employees from assisting in the operation of a CUSO, provided the officials or senior management employees are not compensated by the CUSO. Furthermore, the CUSO may reimburse the state-chartered credit union for the services provided by such credit union officials and senior management employees only if the account receivable of the credit union due from the CUSO is paid in full at least every 120 days.

2. The prohibition contained in subdivision I 1 also applies to state-chartered credit union employees not otherwise covered if the employees are directly involved in dealing with the CUSO, unless the state-chartered credit union's board of directors determines that the credit union's employees' positions do not present a conflict of interest.

3. All transactions with business associates or family members of state-chartered credit union officials, senior management employees, or their immediate family members which are not specifically prohibited by subdivisions I 1 or I 2 shall be conducted at arm's length and in the interest of the state-chartered credit union.

J. 1. A state-chartered credit union's investments in CUSOs in existence prior to February 1, 2008, shall conform with this section no later than August 1, 2008, unless the Commissioner grants prior written approval to continue the credit union's investments for a stated period.

2. A state-chartered credit union's loans to CUSOs in existence prior to February 1, 2008, shall conform with this section no later than August 1, 2008, unless (i) the Commissioner grants prior written approval to continue the credit union's loans for a stated period, or (ii) under the terms of its loan agreement, the credit union cannot require accelerated repayment without breaching the agreement.